

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA**

WENNEKER DISTILLERIES,	:	CIVIL ACTION NO.: 11-1010
	:	(HON. YVETTE KANE, C.J.)
Plaintiff,	:	
	:	
v.	:	
	:	
OLIFANT USA, INC., ET AL.	:	
	:	
Defendants.	:	JURY TRIAL DEMANDED

DEFENDANT, DRINKS' OMNIBUS RESPONSE RE: RULE TO SHOW CAUSE

On August 15, 2011, Defendant, Drinks America, Inc., filed its Motion to Dismiss Plaintiff's Complaint. (Docket No. 10). Plaintiff did not timely respond.

On September 6, 2011, Drinks filed its Motion to Deem its Motion to Dismiss as uncontested. (No. 12). Plaintiff did not timely respond. Plaintiff has not responded.

On September 13, 2011, this Honorable Court entered its Order to Show Cause why Drinks' Motion to Dismiss should not be granted – requiring Plaintiff's response by September 19, 2011. Plaintiff did not timely respond. Plaintiff has not responded.

Instead, on September 12, 2011, Plaintiff filed its "Brief" in support of its Motion to Amend. (No. 13). Notwithstanding the *brief* did not include a motion, it likewise did not attach a proposed Amended Complaint (nor a comparative complaint analysis required by local rule).

On September 19, 2011, Plaintiff filed its "brief" in opposition to Drinks' Motion to Dismiss. (No. 15). Notwithstanding this *brief* did not include a responsive motion, the brief was out of time and without leave of Court.

While inadvertently missing a deadline or violating a Court Rule may otherwise not be grounds for dismissal with prejudice, the aforesaid constitutes flagrant, repeated gross violations (including, of all things, failing to respond to a Rule to Show Cause). In all respects, Plaintiff

has failed to prosecute its action, comply with any and all Court Rules, and has missed each and every deadline – all the while filing non-substantive briefs in a, respectfully, lazy if not disrespectful form of but not prosecution. All, premised upon a Complaint which contains scant averments of Plaintiff's claim against Defendant.

Defendant has been prejudiced by being forced at every turn to defend itself from Plaintiff's disregard, such as instantly, upon a Complaint which has averred no merit (backed by a Motion to Amend which does not elucidate a cure).

In analysis of the Poulis factors, notwithstanding the violation of this Honorable Court's Rule to Show Cause, Drinks should be dismissed with prejudice.

WHEREFORE, Defendant, Drinks, requests this Honorable Court for its dismissal with prejudice. In the alternative, Drinks requests this Honorable Court strike Plaintiff's brief in support of its Motion to Amend and brief in opposition to Drinks' Motion to Dismiss. In the alternative, Drinks requests this Honorable Court for enlargement of time of twenty (20) days from the date of adjudication of this Motion to respond in opposition to Plaintiff's Motion to Amend.

WEISBERG LAW, P.C.

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
Attorney for Plaintiffs

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CERTIFICATE OF SERVICE

I, Matthew B. Weisberg, Esquire, hereby certify that on this 21st day of September, 2011,
a true and correct copy of the foregoing Defendant, Drinks' Omnibus Response RE: Rule to
Show Cause was served via ECF and regular mail, respectively, upon the following parties:

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707 Grant Street, Suite 2200
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Pittsburgh, PA 15219
C/o Shawn McClure

Olifant USA, Inc.
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Cumberland County, PA 17001

WEISBERG LAW, P.C.

/s/ Matthew B. Weisberg
Matthew B. Weisberg, Esquire
Attorney for Plaintiffs